

"(i) 3 percent. or
"(ii) if the employer makes an
election under this
subclause. the actual deferral
percentage of nonhighly
compensated employees determined
for such first plan
year."

(2) Paragraph (3) of section 401(m) is
amended by adding
at the end the following: "Rules similar to
the rules of sub-
section (k)(3)(E) shall apply for purposes
of this subsection."

(e) DISTRIBUTION OF EXCESS
CONTRIBUTIONS AND EXCESS
AGGREGATE CONTRIBUTIONS. —

(1) Subparagraph (C) of section
401(k)(8) (relating to
arrangement not disqualified if excess
contributions distributed)
is amended by striking "on the basis of the
respective portions
of the excess contributions attributable to each
of such employ-
ees" and inserting "on the basis of the amount
of contributions
by, or on behalf of, each of such employees".

(2) Subparagraph (C) of section
401(m)(6) (relating to
method of distributing excess
aggregate contributions) is
amended by striking "on the basis of the
respective portions
of such amounts attributable to each of such
employees" and
inserting "on the basis of the amount of
contributions on behalf
of, or by, each such employee".

(f) EFFECTIVE DATES. —

(3) IN GENERAL. — The amendments
made by this section
shall apply to years beginning after December
31, 1998.

(4) EXCEPTIONS. — The amendments
made by subsections
(c), (d), and (e) shall apply to years beginning
after December
31, 1996.

**SEC. 1434. DEFINITION OF COMPENSATION FOR
SECTION 415 PUR-
POSES.**

(a) GENERAL RULE. — Section 415(c)(3)
(defining participant's
compensation) is amended by adding at the
end the following new
Subparagraph:

"(D) CERTAIN DEFERRALS INCLUDED. —

The term "partici-
pant's compensation" shall include —

"(i) any elective deferral (as
defined in section
402(a)(3)) and

"(ii) any amount which is

c
o
n
t
r
i
b
u
t
e
d
o
r
d
e
f
e
r
r
e
d
b
y
t
h
e
e
m
p
l
o
y
e
e
a
n
d
w
h
i
c
h
i
s
n
o
t
i
n
c
l
u
d
e
d
i
n
t
h
e
g
r
o
s
s
i
n

come of the
employee by reason of section 125 or
457."

(b) CONFORMING AMENDMENTS. —

(1) Section 414(a)(4), as redesignated by
section 1431, is
amended to read as follows:

"(4) COMPENSATION. — For purposes of
this subsection, the
term "compensation" has the meaning given
such term by section

26 use 401
note.

(2) Section 414(s)(2) is amended by inserting
"not" after
"elect" in the text and heading thereof.

(c) EFFECTIVE DATE. — The amendments made by this
section 26 use 414 note.
shall apply to years beginning after December 31, 1997.